IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Case No. 4:13-cr-00147
	:	
MO HAILONG,	:	SENTENCING HEARING TRANSCRIPT
	:	
Defendant.	:	Volume III

Courtroom, First Floor
U.S. Courthouse
123 East Walnut Street
Des Moines, Iowa
Wednesday, October 5, 2016
10:30 a.m.

BEFORE: THE HONORABLE STEPHANIE M. ROSE, Judge.

KELLI M. MULCAHY, CSR, RMR, CRR
United States Courthouse
123 East Walnut Street, Room 115
Des Moines, Iowa 50309

APPEARANCES:

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I N D E X

E X H I B I T S

P R O C E E D I N G S

(In open court with the defendant present.)

THE COURT: Thank you. You can be seated.

We are back in the matter of United States vs. Mo Hailong. The United States continues to be represented by AUSA Jason Griess and Matt Walczweski, and we've been joined for the last three days by the case agent, Mark Betten. We also have joining us Probation Officer Stacy Dietch, and then Mr. Mo appears here personally and represented by his attorneys, Mark Beck, Mark Weinhardt, and Holly Logan.

We have some additional evidence that we're going to take. I did want to ask the parties before we start with Dr. Romanoff, where are we at on restitution? Is there going to be evidence presented on that today or what's the plan?

MR. GRIESS: Your Honor, Mr. Weinhardt and I spoke about this this morning. The Government does have some more specific information, but it needs just a little bit more tweaking. We have agreed, if it's all right with the Court, and at the Court's earlier suggestion, that that matter be put off for a period of time to a later date.

THE COURT: Okay. Then let's go ahead with testimony.

Dr. Romanoff, is he here?

Yes. Go ahead and come forward.

RICHARD ROMANOFF, DEFENDANT'S WITNESS, SWORN.

MR. WEINHARDT: Your Honor, before we start the

testimony, we believe that it will be unavoidable during parts of this testimony that we get into matters that we discussed with the Court in chambers on Monday are confidential, and so we would ask at this time that the courtroom be cleared of persons not associated with the parties and the courtroom be sealed.

I have spoken to Mr. Griess about this, and we've agreed that those law enforcement officers that are here and not just the case agent may remain, provided that they understand that they are under an obligation of confidentiality about what they hear today.

THE COURT: That's fine. Is there anybody here in the courtroom who is not either a lawyer or a law enforcement officer of some kind?

Okay. I'll ask you to step out at this time. How long do you -- well, we anticipate, really, that we'll probably be back in an open setting after lunch, right?

MR. WEINHARDT: I think that's correct.

THE COURT: Okay.

MR. WEINHARDT: And I guess I would expand the definition beyond lawyer and law enforcement to also include our witnesses and clinicians.

THE COURT: Okay.

MR. WEINHARDT: We have a couple who fit into that category but who already know everything we're going to talk about.

THE COURT: Okay. That's fine. So we'll excuse everybody else at this time, and I'll ask, probably, the U.S. Marshal just to keep an eye on the door in case we have people come in. We'll check and see who they are.

(The portion of the transcript from page 86, line 5 through page 129, line 25 is contained in a separate transcript filed under seal.)

AFTERNOON SESSION (1:15 p.m.)

(In open court with the defendant present.)

THE COURT: Thank you. You can be seated.

We are back on the record in the matter of United States vs. Mo Hailong. We are joined again by all of the parties that were here earlier in the day and by Mr. Mo himself personally.

I want to talk briefly about restitution before we get to final arguments in the case.

Mr. Griess, are the seed companies going to be asserting any kind of actual loss in this case or are they just seeking -- I mean actual loss beyond sort of legal fees and costs.

MR. GRIESS: No, Your Honor.

THE COURT: Okay. And are they still both seeking legal fees and costs?

MR. GRIESS: Yes.

THE COURT: And are those amounts as previously articulated, just with more detail?

MR. GRIESS: Your Honor, they are as previously articulated with a little bit more detail. However, in looking at what I've initially received, I want to go through them and confirm some details. That process will not take very long. I would expect I would be able to provide those final numbers and figures within a week.

THE COURT: Okay. So I'll have you turn all that material in within a week, and then we'll set a hearing up 60 days after that material is turned over to the defendants, and we'll reconvene at that point to finalize restitution amounts in this case.

Mr. Weinhardt, I assume you want an evidentiary hearing on that or do you want me to proceed based on the record?

MR. WEINHARDT: No. We want an evidentiary hearing because we don't agree, based upon what we've seen so far, that everything is properly recoverable under the restitution statute. In fact, I think, based on the materials he has so far, the Government doesn't even agree that it's all recoverable, and that's what Jason wants to try to figure out in the next week.

THE COURT: Okay. We'll take a look, then, at those materials down the road.

Let's turn, then, now that we've heard all the evidence in the case, I'll go ahead and formally calculate the advisory guidelines. To avoid ex post facto concerns, I will be using the 2012 sentencing guidelines in this case, which are more advantageous to Mr. Mo with respect to the one upward adjustment and with respect to the fine range that is applicable in this case.

So we have a base offense level of 6. There's then a

28-level upward adjustment for intended loss, and that intended loss amount that I found was $320 million. We have a two-level increase for sophisticated means. There are no other upward adjustments.

There's a two-level decrease for acceptance of responsibility.

Mr. Griess, are you moving for that third level as well?

MR. GRIESS: Yes.

THE COURT: So we have a total offense level of 33. Mr. Mo is a criminal history category of I, so ordinarily the advisory guideline range would be 135 to 168 months' imprisonment, although here the statute caps out at 120 months, so our range effectively becomes 120 months to 120 months. However, we then have the Rule 11(c)(1)(C) plea agreement that caps that sentence at 60 months' imprisonment, and I will stick within that range of 0 to 60 months.

Probation of one to five years is an option under the statute, although not recommended by the guidelines, and here not agreed to by the parties, other than at the bottom end of that particular range.

Supervised release of one to three years is applicable. The recommended fine range is $17,500 to $175,000. There is a $100 special assessment.

It certainly appears that Mr. Mo has the ability to

pay a fine based upon the information contained in the presentence report. Whether or not he has that ability in connection with any large restitution order that may be entered is a different question, and we'll have to tackle that as we move forward here today and then at the later hearing.

So let's go ahead and turn to variance arguments. Mr. Griess, are there any victims who wish to be heard by the Court before sentence is pronounced today?

MR. GRIESS: No.

THE COURT: Okay. You can go ahead with argument, then. You're welcome to sit, stand, use the podium. Whatever is most comfortable for you is fine.

MR. GRIESS: Your Honor, thank you.

First of all, with regard to variance arguments, are you also including in that our assessment of the 3553(a) factors?

THE COURT: Yes. Essentially, whatever arguments you want to make on what an appropriate sentence is in this particular case.

MR. GRIESS: Thank you, Your Honor.

And I will, if it's all right with the Court, choose to sit on this. And I apologize in advance if this is a little disjointed, but I'm going to try and get through this rather quickly in accordance with the Court's order.

The Government in this case is seeking a sentence that

reflects the nature and circumstances of the offense and the need for the sentence in that case to do so. This is a long-running conspiracy, as I know the Court is well aware. It spanned from 2007 to 2013, employed sophisticated means, which the Court has already discussed in detail, including the international shipment and transport of stolen seed germplasm.

It involved dozens and probably hundreds of instances of trespassing in fields to steal competitors' breeding resources, as it was often referred to. It resulted in the theft of the best corn germplasm in the world, something neither Pioneer nor Monsanto have, but that is the combination of both of their best inbred germplasm. That makes this a very, very serious offense.

And while the defendant's role was not of a leader, as determined by the Court, he was far from a mope or a flunky in this case. He was a constant willing participant who managed to successfully navigate all of the security and protective measures over the course of many years.

As one example, and there are many, and I just direct the Court's memory to the Government's offense conduct in this regard and some of the other evidence that was submitted by way of exhibit, but there were discussions where they discussed the difficulty in being able to commercially purchase seed under the circumstances when they did not want those seed dealers to know information about them, and he was able to successfully do that

on numerous occasions over the course of the conspiracy.

Other members of the conspiracy offered regular praise of his conduct. One in particular, in March of 2010, Mr. Mo is discussing with Mr. Che, who was a member of DBN's breeding program, how much hybrid seed he would need to be able to send back to China in 2010. Che explained that the breeding department was feeling very heavy pressure to produce new varieties and hybrid and that this was going to occur, quote, mainly through the obtainment of foreign seed industries' breeding resource. And Che at that time reminded Mr. Mo, "You are the only channel for overseas obtainment."

And this was essentially how it went in this case until 2012 when some individuals -- and actually earlier than that when some individuals came over to assist him in that regard.

There is a need, Your Honor, in this case for the sentence that the Court imposes to reflect the seriousness of this offense. There have been lots and lots of cases that have been cited to the Court, but very few, if any of them, involved an intended loss of at least $320 million. And I know from the Court's review, at least from the Government's perspective, the Court will understand that this is a very conservative estimate and amounts to what involved a discussion between two of the members of the conspiracy.

The truth of the matter is the full impact of this

crime is currently unknown. What we do know is that there were many, many instances of the international shipment of both hybrid and inbred corn seed and that there was unlawful utilization of that corn germplasm by scientists in China to determine its genetic makeup -- not to grow it, as it was intended to be sold, but to determine its genetic makeup, that was obviously the goal of the conspiracy in this case -- and that there was significant theft of both hybrid and inbred corn seed containing trade secrets in 2010 and 2011 and in, most likely, 2012 as well, as is illustrated in the Government's offense conduct.

The parameters of this particular theft that occurred over seven years will likely not be known for several years, and the true measure will be measured in the loss of market share that Pioneer and Monsanto and perhaps other seed industries will feel as they come to know the full impact of this crime.

And this is reflected in more than just corporate profits or the corporate bottom line. It's going to reflect itself in incredible economic impact that could be felt that will involve the loss of jobs and job opportunities if this Chinese market or part of it is lost as a result of the defendant's theft.

And this is market share that Pioneer and Monsanto have earned through years of research and development, innovation, trial, and hard work. And unlike other types of

theft, once those trade secrets are out, there's no getting them back. The innovation and effort it took to develop those trade secrets is gone.

Now, the evidence is clear that Mr. Mo was well aware of the import of his actions -- or, excuse me, the impact of his actions, and, again, I'll refer the Court to the Government's offense conduct letter in great detail.

Beyond that, Your Honor, and this is the center of the Government's argument, is there is a huge need in this case to afford adequate deterrence to the defendant's criminal conduct. We need to impose a sentence, or the Court does, which doesn't lead other would-be thieves, whether they're foreign or domestic, to conclude that stealing a competitor's trade secrets is worth the risk.

There's going to be a cost-benefit analysis that goes on, and given the value or the intended value of the theft in this case, a sentence of probation certainly is going to lead individuals to conclude that such a theft is worth the risk.

And even if the defendant could or was willing to write the victim seed companies a check for the full amount of the intended loss in this case, there would still be a massive loss, because in all trade secret cases, once the trade secrets are gone, their value is significantly diminished.

For that reason and the other reasons which we're going to cite here in a minute, Your Honor, a sentence of five

years' imprisonment is what the Government seeks. We find that to be the sentence that's sufficient but not greater than necessary to achieve the goals that we've discussed in this case and including, most importantly, to reflect the serious nature of the crime and afford adequate deterrence to future criminal conduct.

With regard to fine, Your Honor, the Government does not believe that a fine is the best way to punish the defendant in this case, and we feel like what money he has at his disposal is better spent on caring for his family and some of the things we've heard today and on paying the restitution to the victim companies, so we are not seeking a fine. Rather, to reflect the serious nature of the offense, we ask for a sentence of five years' imprisonment.

With regard, quickly, Your Honor, to some of the other arguments that were made, first of all, with regard to Mr. Mo's medical conditions, the evidence in that case consisted of the testimony of Dr. Wise, who hasn't worked for the Bureau of Prisons in approximately 12 years, and is currently consulting based upon his review of records and documents and his knowledge when he was there approximately 12 years ago, and then on a submission, Government Exhibit No. 60, that was presented by the Government of Dr. Harvey.

Dr. Harvey is currently employed by the Federal Bureau of Prisons in a significant way. He's the regional medical

director for the north central region, this region, and he has been since May of 2009. He's intimately familiar with the process of categorizing defendants and placing them, and while he may not classify them personally and take part in that process directly, he's certainly aware of it, as he demonstrates through his letter.

And therefore, when he indicates that the defendant will likely be a Care Level IV, I think that's an opinion that requires the Court to give it some credibility. He indicates that at a Care Level IV, he will be able to receive the same -- or, excuse me, the prescribed treatment and medication as was recommended by his physicians. In other words, there's nothing that he will need that he won't be able to have.

Of course, he may not be able to have exactly as he wants, and you can certainly understand -- the Court can certainly understand why that couldn't be the case regardless of the circumstances. But it explains in great detail, and Dr. Wise has too, that there are efforts in order to provide for the best interests of the patient's health, not necessarily putting cost first, but to provide for the best interests of the patient's health. And through all the evidence that was obtained, it's clear that the Government will -- or, excuse me, the Bureau of Prisons will be able to afford those opportunities to the defendant.

I would just add quickly by way of example that the

cases cited by the defendant where the Court found that there needed to be a departure to probation involved much, much more serious conditions than the defendant is currently facing. And the law requires the Court to consider the defendant's current health situation, and all of those cases involve very, very serious current situations, whereas the defendant currently, fortunately, is not facing a cancer situation as he is in remission.

All of his concerns with the ability of the Bureau of Prisons to adequately detect that cancer have been addressed by Dr. Harvey, and I would ask the Court to not consider that a significant basis for departure.

With regard to the family health concerns that we heard about this morning and briefly this afternoon, clearly, this is a tragic situation, and to the extent, unfortunately, it's been exacerbated by the court case, it's the defendant who bears the blame.

Unfortunately, they're not extraordinary, and I shudder to think what would happen or what we would find if we turned some of the same high-power resources on many, many of the defendants that come before this Court. I think we would see the same thing over and over and over again, and it just does not justify a sentence of probation.

Dysfunctional families, unfortunately, are common, and to sentence the defendant to probation based upon these

circumstances, which are all too common, would be unfair to all the other defendants who come before this Court.

With regard to the immigration consequences that the defendant possibly may face, I would just say that the Court should -- or I would ask the Court not base in any significant way a departure on these immigration consequences. While I believe the defendant is correct that if he is sentenced to more than a year he will be an aggravated felon, his deportation as a result of that is far from certain.

He will have the opportunity to appear before an immigration judge and argue for any number of exceptions which would not result in his deportation. While it is possible and remains possible that he could -- an immigration judge could conclude that he should be deported, I think in this case it's far more important that the Court base its sentence on what occurred in the case, the nature and circumstances, the need to afford deterrence, and reflect the serious nature of the crime.

Finally, Your Honor, with regard to sentencing disparity, this is a serious, serious crime that continued for a very long time, and the loss amount, again, is at a level where it would be disparate not to impose a sentence of imprisonment. When you consider all of the facts and circumstances, and I'm not -- there are many cases, and some of the cases cited by the defendant involve facts -- well, they all involve loss amounts that are much, much smaller than we have here. Some of them

involved 5K motions.

But it's the Government's position that anything other than a significant prison sentence is going to actually depreciate the seriousness of the crime, and so based upon that we remain in our position of five years' imprisonment to reflect those factors.

Your Honor, I know I've gone quickly through this, but I'm trying to comply with the Court's order of 15 minutes, and unless the Court has additional questions of me, those are the Government's arguments: a sentence of five years' imprisonment, a mandatory $100 special assessment, no fine, restitution as to be determined by the Court in the future. Obviously, the Court will need to impose a period of supervision upon his release from prison.

I would also ask that the judgment or that the sentence reflect the forfeiture that the defendant has agreed to, and I believe there's been judgments of forfeiture that have been provided to the Court prior to today's date. I just ask that those be reflected in the actual sentence.

THE COURT: Thank you. I know we did a forfeiture of the real property. I think we may have left standing some forfeiture of some other property, perhaps, but we'll make sure all of this gets into the final J & C.

I'll swing back to you if I have questions.

Mr. Weinhardt.

MR. WEINHARDT: Thank you, Your Honor.

Before this Court for a year and a half but for many of us going on three years, we have talked about what a group of co-conspirators did, what Robert Mo did, what the Government did to investigate it, but only this week and today do we get to talk about who he is.

So I'm going to start to talk about the history and characteristics of the defendant first, and then I will address some of the other factors. I'm not going to try to touch every 3553(a) factor, I think the Court knows them amply and will do that, but I want to highlight the ones I believe are important.

In the course of his pretrial release in this case, he was supervised for a lengthy period by veteran federal law enforcement officers; in one case by Mr. Peoples, who wrote to this Court, for 19 months. These are people who have -- we've gotten to know them fairly well. Mr. Beck and Mr. Peoples know a number of people in common. But they have been around the block and their judgment is good, and they know this man as well as anybody on earth at this very moment.

Here's what Mr. Peoples said based upon that experience: That he is a perfect gentleman, that he is a model citizen and a committed family man.

And another one with similar experience, Michael Moliere said -- really, it's been an incredible statement -- "In my 43 years in public and private law enforcement security work,

I have never dealt with a more respectful or compliant individual."

One of the ways that the Court assesses the way that a defendant is going to react to a sentence that the Court imposes is how did he react between the time of arrest and up to the time that sentence is imposed, and his reaction has been exemplary and unusual and all in a positive way.

The other letters about Mr. Mo that the Court has seen point out that he is an attentive and passionate parent, he is the rock for the rest of this family. He has, and this is a quote, genuine care for the people around him. He helps people to get settled into this country. He goes out of his way to teach them to play tennis. He created a program through his church to help settle new immigrants to this country.

At the same time, the letters say that he was -- is ashamed and filled with remorse, that's a quote; another one, that he is embarrassed by what he did and is completely remorseful of his actions.

And this, I think, is a key fact about who he is from the letter from Xiaomu Li. "Although Robert is extremely smart and intellectually curious, he sometimes seemed child-like, naive, and gullible."

And I'm sorry, Robert.

But all of us on the defense team have had the same reaction, that we struggle to find a combination of someone of

such immense intelligence and academic achievement on the one hand and naivety and lack of street sense on the other.

It's why, after the Tiananmen Square uprising, when students were asked and asked and asked what they had done and what they believed, they were all shrewd enough to lie to the interrogators, except Robert, who suffered academic punishment because he was the only one who was gullible and open enough to tell the truth. That naivety has persisted throughout the offense conduct in this case and in some ways has persisted to today.

Mr. Mo did not come to this country or to this business with bad motives. Others did. The co-defendants in this case are agricultural scientists who came to the United States to get these technologies. Mr. Mo has no background in agriculture and came to this country to free himself, frankly, from the yoke of the family business.

But through a series of bad breaks -- 9/11 and what it did to immigrants who wanted to work on defense contracting, Florida International University losing the grant that accounted for his job due to the work of other people -- made DBN a sheepish last resort for him to support his family, and so that's where he wound up, where he did many, many things and does many things other than trying to obtain technology in the corn industry.

That, then, I think, takes us to the nature and

circumstances of the offense. And I don't disagree with Mr. Griess that there were dozens, if not hundreds, of entries onto fields at certain times. I don't disagree that in certain ways the scope of this was very wide. But I think that the type of mental state matters.

If this were, for example, an insider trading case with $320 million of either intended or actual loss involving an executive who knows that a federal statute criminalizes insider trading, that's one kind of criminal intent, a person who knew the criminal law and tried to see if he could evade it.

But in this case, the trade secret statute is merely a criminalization of a statutory civil tort. It doesn't have the word "willfully" in it, it does not require any understanding that the thing that you are doing is a crime.

So Mr. Mo's appreciation of the wrongfulness of what he was doing is something that only grew gradually over time. This wasn't a determination, "This is a crime, let's go see if I can get away with it." It might have been on the part of these agricultural scientists who came to our shores in order to commit theft. That's not the case for Mr. Mo.

The duration of the mental state also matters. The conspiracy, in some sense, ran from 2007 to 2013, but lots of everything that Mr. Mo did was, in his view, not criminal. It was only when he starts to cross onto the fields, I would submit, and cross onto the fields with a specific intent, "Let's

find inbreds," that that's when he, in his own mind, starts to cross the line into criminal wrongdoing, and that didn't happen until 2010.

Prior to that, there was only this brief sort of ham-handed taking some things from commercial fields, field corn, with Mo in 2007. But otherwise there was no evidence of going onto fields in an attempt to target technology until 2010. And even then, and this is in PSIR paragraph 67, he got 15 ears of corn, of which only 6 were believed to be inbreds.

The real collection happens in 2011. And even when the real collection happens in 2011, Mr. Mo relatively is a break on that collection because in 2012, recall that the co-conspirators are recorded saying how much faster they were able to go, how much more Dr. Li was able to get away with because Mr. Mo wasn't there to hold them back. And it was in 2012 instead that Mr. Mo decides he doesn't want to be involved in this anymore.

Now, the Government can hit me all over the head if I try to argue that there was a withdrawal from the conspiracy. I understand that for less than 48 hours at the end of September he flew up and assisted those individuals in getting out of the country, although the only piece of evidence that the Government has -- or I should say had to show that the third batch of seeds left the country was Government's Exhibit 1-82, which is an acknowledgment from Dr. Li of receipt of 120 or 130 varieties.

The Government now concedes that we are right, that the date on that document is wrong, it's not from February of 2013 but is, for some computer reason, misdated. The clue for when that document was actually generated is from what Dr. Li asks Mr. Mo to do, which is to download to him the GPS log from the car that was being driven.

Well, Mr. Mo didn't have access to the GPS of a rental car months after the September 2012 trip, he only had access to the GPS from the car that he drove, and that was 2011. We deny that the third batch of seeds went across the pond in 2011.

The Court has recognized that Mr. Mo was essentially a pawn in this matter, not -- I'm not arguing that he's a flunky or a mope, to use Mr. Griess' terms, but I am going to argue that Mr. Mo's role was conducted and driven from the outside, and I think the Court has properly recognized that.

I also believe that there is a difference criminally between actual loss and intended loss. Maybe there will be some fallout from this offense in the future, but maybe this is simply an attempt that did not succeed. There is not a shred of evidence that anything has made it into any commercial field, any production, anything for sale anywhere, even though this offense going back to the 2011 collection is now five years old.

There's no evidence to support the idea that this succeeded, and attempts -- this goes back to the first principles hundreds of years ago -- attempts are sentenced

differently than completed crimes.

Also, the last thing about nature and circumstances of the offense is this: This Court recognized correctly when we argued the Hingorani sentencing that 2B1.1 is sometimes just broken because of the way that large numbers inflate the criminal consequences of what people actually did. I would submit that this is a poster child, especially given that it's an intended but not an actual loss case, for that problem.

Mr. Mo spent 22 1/2 months away from his family on pretrial release. 10 1/2 of those months he was interrupted an average of 28 times a day, and he never had a personal space to his own. There was always an open door between him and somebody who was watching him.

And then when he finally did have some personal space, he has always, ever since then, been watched by cameras or watched directly. He's worn two ankle bracelets. Because of the cameras, none of his children have friends who will ever come to visit their house because they're afraid of the cameras.

He has been inspected and reviewed and followed in every possible manner. That is not a typical pretrial detention. I understand why it happened and, given the resources of his family and his foreign national status, the concerns that motivated it, but that's different in a way that the guidelines do not take into account, and that is a reason why he should have a different sentence than what the guidelines

call for.

By the way, just with regard to the family situation, and I'm not going to talk about that factually at all, but I am going to say this: It is noteworthy, as the Court tries to predict what's going to happen in the future, that in those 22 1/2 months Mrs. Mo only caused her children to see their father once for a very few days, once in 22 1/2 months.

Next I'd like to talk about the medical situation. Mr. Wise has not worked for the BOP for a while, but he described all the things that he does to keep current on what it is that they do, and there was no showing that his knowledge isn't absolutely current as of today. And the Government produces no witness to counteract anything that Mr. Wise says. It relies on this letter.

But crediting the letter, here's what we know: Number one, we don't know if Mr. Mo is going to be a Level IV or a Level II. Dr. Harvey doesn't say he's going to be a Level IV, and Dr. Harvey doesn't predict that. On the logic of what a Level IV means, needing daily care, Mr. Mo is not a Level IV, and there are long wait lists for those beds.

Secondly, will he get the screening that Dr. Araujo prescribes that he should have on the intervals, and so forth, that he should have? Inspect Government Exhibit 60 carefully. It recognizes that protocol. It does not say that Mr. Mo will get it.

Third, if he gets it, will the scans be looked at by a medical oncologist, much less a sarcoma specialist? Dr. Harvey is a regional director, but he is also the medical director for four out of the 18 facilities that he is supposed to oversee because four of them don't even have the medical director on site that they're supposed to have. How can we have faith that those Level II facilities will access a medical oncologist when most of the care is given by non-doctors?

If he sends the records away to someone and a medical oncologist does review them, how do we know that the Bureau of Prisons is going to agree with their recommendation? If he gets sick and goes to Butner, how do we know about the quality of the treatment that he's going to receive given that the uncontradicted evidence is that that is not known as being a sarcoma center?

And finally, will he be in the BOP at all? The uncontradicted evidence from Mr. Wise is most foreign nationals in Mr. Mo's situation go to private prisons. They don't go to the BOP or they don't have the same medical regimen.

And this is what the Department of Justice said about the BOP medical situation -- or the non-BOP medical situation in August: "We determine that the BOP is unable to effectively identify problem areas among the contract prisons or contractors to proactively take action before a problem becomes acute or systemic." They're talking about the BOP's ability to monitor

the medical care in contract prisons.

We have no idea what kind of care Mr. Mo is going to get. Every one of those uncertainties that I listed is a ratchet up, a step upward in the risk that he will face if he is committed to the BOP.

That is an extremely unusual situation, and I would submit none of the Government's cases that deal with a present medical situation, and, frankly, even none of ours, properly account for this odd time bomb situation that is inhabiting Mr. Mo. He has been failed by a medical correctional system once. He should not be failed again.

All I will say about the family circumstance, because I think the Court understands the facts more than I can argue them, is that every single case that the Government cites about family circumstances is a departure case. It's not 2001 anymore. After 2005, the Court views that through an entirely different lens, and I think enough said.

There is a bright-line rule in immigration law about whether something is an aggravated felony. We'd agree with what the rule is. But where our understanding, and none of us is an immigration lawyer, is that most of the remedies, if not all of them -- waiver, cancellation, et cetera -- aren't available once you cross that one-year bright-line rule into aggravated felony.

So what are the alternatives that this Court has? We would submit that if the Court is going to give Mr. Mo even a

fighting chance to stay in the United States that the Court needs to fashion a sentence with 364 days or less of confinement. He's got 132 days in, so the Court has 232 days that it could use. And that includes home confinement, halfway house, whatever.

If he needs to see the inside of a prison, then the Court should sentence him to the BOP for three months right in between his screening visits so that way we don't ever have to worry about or rely on the BOP medical system. The other time could be halfway house time, it could be home confinement time.

We would recommend, though, that the Court place him on probation and make those things a condition of probation so that that way, based on what happens with him medically, this Court can manage his punishment going forward rather than letting the BOP do it.

And then this Court should impose Draconian community service obligations on him. The Cai letter, C-a-i, demonstrates that he can do amazing things in the community if he puts his mind to it, so let's make him spend 1500 hours a year for two or three years doing that, and in nights and weekends he could sell whey permeate to -- or buy whey permeate in order to do what DBN needs and he can support his family, but let him put his talent that he did use helping Chinese immigrants re-enter this country, let him use that.

And we found a program through which he can do it.

Let him use that to reintegrate prisoners back into society and put his talents to work and make him the Government's employee for some significant period of time.

That is an unusual combination of sentencing recommendations, I recognize, that we are making in light of this case, but this is in so many ways an unusual case and in so many ways an unusual individual. He's an unusual individual who we have really come to appreciate and to value and to respect and to want the best for.

We're all fighting here, and I'm not going to apologize for the resources that we're fortunate to have. The Government, although, I think has 73 FBI agents who worked on this case one time or another. Early on the resource balance was the other way.

But I'm not going to apologize for what we bring to this case, and I don't think Mr. Mo should be taxed because other people may not be fortunate to. The point is we have been able to uncover the essence of who this man is, and the essence of who this man is is not someone who belongs incarcerated with what is, we fear, living inside him.

THE COURT: Thank you, Mr. Weinhardt.

Mr. Mo, this is the time in the hearing when you're permitted to say what you might want to say to me or to those that are here to support you today. You don't have to say anything, but is there anything you would like me to know?

THE DEFENDANT: Yes, I want to say something.

THE COURT: Go ahead.

THE DEFENDANT: Yeah. I put a lot of effort writing this letter, and now I'm going to read it and let everyone know that I'm really sorry.

Dear Honorable Judge Rose: I'm writing to you, to Your Honor, for the only purpose of admitting my mistakes and in taking full responsibilities without any complaints or excuses.

When I was a student in China, I suffered in the 1989 protest because I expressed my true feeling and thoughts. Since then it became my dream to live my -- to live the rest of my life and to raise my family in the United States. I am deeply sad and ashamed for not showing respect to the country that means so much to me.

When I first came to the United States in 1998, I was a young man, bearing the American dream to pursue my education and establish a career through honest effort and hard working. My wife and I have two children who are born in the United States. J[redacted] is now 16 and S[redacted] 11. We wanted to build a better life for them with more opportunities for their future.

Most important to me was to find security for my family by working hard to establish a career and a good reputation. Now I have destroyed everything that I wanted; my reputation, job security, and my family's respect.

The worst day of my life was the day I got arrested on

December 11th, 2013, when almost 20 federal agents came into my house around 6 a.m. My young children were waked up suddenly in their own bedrooms. They're dressed in pajamas and saw me, their father, get taken away in handcuffs.

THE COURT: Ms. Mo, you can take some time if you need it. Just continue whenever you're ready, okay?

THE DEFENDANT: Yes. I'm ready.

The two kids were sleeping and meanwhile frightened. It hurt me badly and hopelessly by seeing the expression on my young son's face as he put a blanket over his head in shame and fear. I will never forget that.

In my mind, the cancer that developed in Des Moines was a punishment for my crime. I was ashamed when the guards left me no privacy in the ultrasound, CT scan, blood testing, chemotherapy, and doctor rooms. Now I understand this is all part of the punishment due to the crime.

I dreamed about death and constantly worried that my wife would not be able to take on all the responsibility of raising the family by herself because she has a bad health situation.

Since my absence from home, my daughter has not been the same. She was a smart, outgoing girl in good health with many interests, but now she just wants to stay in her room. She is very sad and afraid. She is no longer getting along well with her mom, and they engage into arguments quite often and

easily. She doesn't want to eat or go to school. Her grades kept dropping.

And the most scary event is on this August 4th. She did not eat for full day and fainted out on the floor, hitting a sharp corner while falling down unconsciously and getting her scalp lacerated. When she waked up and walk to me with blood flowing down on her face and neck, my first impression is that she was trying to kill herself. I'm extremely sad at seeing her blood shed on the floor, and her change became the most hurting pain in my heart. I have always been closest to her and trying my best to encourage her and talk to her.

I used to play sports activities with my son like basketball and tennis, but when I came back home he only keeps playing chess and not willing to do outdoor activities. My heart is broken because I know that I am to blame.

When I came back home in late 2015, the fruit trees and the flowers in the backyard were dying or died. It's a bad sign for me. I put more effort and took good care of them. When the red rose started flowering, it immediately turned on the hope in my mind when my kids first enjoyed the fruits from the mango, avocado, and dragon eye trees in the backyard. It reminds me how precious to stay at home.

The new leaves appeared in backyard trees always brighten my eyes and encourage me to live a meaningful new life. Nowadays the beautiful poems and songs make me into tears

easily. I have learned a lesson and will never put myself in a situation like this again. I will do everything I can to make up for my wrongdoing.

With great respect, Hailong Mo.

THE COURT: Thank you, Mr. Mo.

Cases are always difficult. Sentencings are always difficult, and the day that it becomes easy to take away somebody's liberty should be the day that I retire from the bench. It should never be an easy decision to make, and it's certainly not in this particular case.

This is, perhaps, the most complicated case that's ever come before me as a judge, that I ever had any involvement in during my years of federal investigation and prosecution. It is an immense case on a lot of levels. And so we have spent, as we needed to, a whole lot of time in this case talking about all the complexities of it. We have spent a great deal of time talking with each other and taking evidence about what to do in this particular case, both, you know, prior to trial and after the plea happened and as we were pending sentencing.

I have read, you know, the 2500 pages of material that was provided to me by the parties in anticipation of the sentencing, and I read the thousands of pages before that that came before me as part of the litigation of this case.

Looking at all those matters, I'm going to make some kind of basic factual findings and note some basic things in the

record, and then I'm going to talk about the arguments that have been presented and then how I view those under a 3553(a) analysis.

It goes largely without saying, given the complexity of this case, that I have considered all of the factors under 3553(a), and I'll talk about them more specifically. I have considered the advisory guideline range here. I have considered the statutory penalties.

I considered many of those matters when the parties brought to me the original 11(c)(1)(C) plea agreement to 0 to 60 months, and I had considered at that time whether that was something I could live with and whether it was something I thought was a fair and reasonable resolution of a very complex matter.

Defendant is a Chinese citizen and a lawful permanent resident of the United States. He was an executive at DBN, an agricultural company in China. DBN is a large, sophisticated, and very powerful company. DBN's billionaire chairperson is the defendant's brother-in-law.

DBN was identified by the Chinese Government as a National Key Dragon Head Enterprise, which means the company is deemed vital to China's agricultural development and which means DBN receives China's financial and governmental backing.

Defendant was DBN's director of international business and was responsible for DBN's operations in North America, and,

as Mr. Griess pointed out, became the sole source, really, of foreign corn and agricultural technology back to China.

Corn is the largest crop grown in China, and as that country's population is booming, so too is its need for corn. China currently has to rely upon foreign powers to create that corn because their technology lags years and years and years behind the technology in other countries and in particular behind the technology of the United States.

Pioneer and Monsanto, without question, have developed, through years of labor and great technology and millions and millions of dollars spent, corn lines that are far superior to anything that China has been able to develop and really served as the world's leaders in corn technology.

Against this backdrop, the criminal case in Iowa developed. And it was one that started, you know, with a man in a field and grew into something, you know, that internationally is an enormous case for both China and the United States.

Defendant was tasked by DBN with acquiring highly valuable American corn germplasm for China, whether through legal or illegal means. And although the defendant had no particular expertise in corn germplasm, he undertook this task that he was given through a variety of methods, starting, arguably legally, by sort of buying corn commercially, although in violation of some of the contract agreements, and then escalating into finding and stealing from the confidential test

fields where the inbred parent lines were being grown by Pioneer and Monsanto.

We know from the FISA investigation that was done here and by seizures that were accomplished that Defendant was able to send back to China more than a thousand pounds of corn over the course of many years and that this corn was a variety of things. Some of it was commercially available hybrid corn, some of it was patented corn, some of it was trade secret corn that was either pending or not yet pending patent protection. But at any rate, Defendant sent back to China enormous amounts of very valuable corn.

We know from conversations that were intercepted, although the timing of those Mr. Weinhardt has raised questions about, but we know hundreds of unique corn lines from Pioneer and Monsanto were acquired in this way, and, as Mr. Griess spoke about, this is uniquely complicated or uniquely aggravating for these corn companies because they each have superior technology and they don't share with each other that technology, and suddenly China has been able to take the best of both of those companies' work and put them together.

I have found here that the loss here was at least $320 million -- or the intended loss, I should say, was at least $320 million. I agree with the Government that is likely a gross underestimate of what the intended loss was.

There is certainly evidence that China managed to use

seeds that the defendant sent it to grow corn. There are intercepted conversations talking about how well the corn that they got from America is growing in their fields in China and which particular seed lines are doing well and which ones are not, so we know that this is growing and is in production in China.

Now, whether, you know, the early 2010 corn is what's growing or the later stolen 2011 and 2012 or 2013 corn is growing, but we know that China has managed to go in production using technology that America, through Pioneer and Monsanto, developed.

We also know a number of things about Mr. Mo. He is 47. He was born and raised in the Sichuan province of China. He had a loving and supportive childhood. He is obviously an exceptionally bright man. He has several degrees, including two doctorate degrees, one in engineering thermophysics and one in mechanical engineering. He earned one of those in China and he earned the second at Kansas State University.

He immigrated to the United States in 1998. He married in China before he immigrated, and his wife came with him to the United States, and together they have two United States citizen children who were born here.

The defendant has always been employed. There's no question here that he works hard. What Mr. Weinhardt raised in his arguments about the defendant's loss of his position at the

Florida university and how he then turned to DBN is borne out by the employment records that we see.

What is clear is that Mr. Mo was earning quite a lot less than DBN offered him and at his highest I think was making $40,000 in annual salary. DBN took him on and immediately more than doubled that salary, and as he increased his criminal activity, his salary was increased by DBN, and so he ends up making easily three and almost four times what he was making in legitimate research when he's working for DBN.

We know also here that in 2014, shortly after his indictment in this case, he was diagnosed with synovial sarcoma, which is a very rare form of cancer. He has successfully undergone surgical and chemotherapy treatment and is now -- this isn't the medical word they use, but in essence, he's in remission. In medical terms, since July of 2015, there's no evidence of his cancer.

We also know there's a fairly high risk that this cancer will reoccur, and that risk of reoccurrence at the five-year mark -- or the risk is 50 percent reoccurrence within the first five years. That number drops with each successful year that's passed cancer-free. Mr. Mo at this point is coming up on his 15-month anniversary cancer-free.

Experts recommend that he be screened regularly, and here the top experts in the world, really, at MD Anderson for this particular disease recommend that he be screened every four

months for part of that time and every three months for part of that time, so every three months until July of 2017 and then every four months for the next two or three years, and then every six months the remainder of his life.

Mr. Weinhardt raised here an issue of the correctional system failing him medically, and I want to touch on that just briefly just to make sure that the public record on that is clear. Mr. Mo had symptoms of this disease beginning in 2002. He was seen in China in 2013 with symptoms of this disease, and they deemed there to be nothing there of concern.

When he was taken into the jail and he was going through medical procedures there, he noted some of these same symptoms. He told the jail that he had previously had benign types of growths removed from his chest and his arms, and he told them that he had been tested in China earlier that year and that they had deemed there to be nothing wrong with him.

He noted the size of this particular growth from China, and when they did testing the size remained consistent here in Iowa. Understandably, with that background, they did not anticipate that he had this rare form of cancer of which there's less than a thousand diagnosed each year.

Now, he went on to privately have surgery that did not do what it should have done, probably, and he went on to get, as he appropriately could, the very best medicine available to him in the world at MD Anderson for this particular condition, and

undoubtedly their expertise is what saved his life.

But I don't see that as a failure by the correctional system to help him. I see that as a pretty reasonable treatment analysis that they had undergone or that they underwent when he came to their attention.

The defendant's other history is otherwise unremarkable. He's never had substance abuse problems, he doesn't have other physical problems aside from those related to the cancer. He has some mental health struggles, which are not unusual given his history of spending time in the United States and of facing incarceration as he does. He's struggling with depression and anxiety, and that's a pretty common thing we see among defendants.

So that's a rather long recitation of what the facts are in this case. Now I want to tackle some of the arguments the parties have made. And if I don't touch upon every single argument that's been presented to me in the 200-plus pages of briefing, it's not because I haven't considered it. I have considered all of them. I just want to hit upon a handful of them.

First, under a 3553(a) analysis, and generically in this case, the first thing I have to do is impose a sentence that reflects the seriousness of the offense and promotes respect for the law and provides just punishment.

Frustratingly in this case, to me, when a defendant

appears before me and asks essentially for a 100 percent variance, I am looking for certain things. I am looking for early and timely pleading guilty, I am looking for cooperation, I am looking for making victims whole. And we have none of those things in this case.

Mr. Mo didn't timely plead. He pled just before trial and after we had litigated 70 -- more than 70 pretrial motions. He didn't proffer. He's never cooperated. He's never sat down with the seed companies and told them what he did, told them what fields they trespassed into, told them the seeds they stole, told them who his co-conspirators were, identify for them anybody within the companies that may have helped him. He's never done that. He has not repaid for them a single cent of what was stolen from them.

And I have to consider that when I decide whether he's somebody who has earned his way to a 100 percent variance. It would not be fair, in my view, to give him the same sentence I would give someone who had done all of those things. And effectively, that's the lowest sentence I can give anyone is a sentence of probation.

Second, I have to consider deterrence. This case is undeniably part of a larger trend that is being seen across the United States. And just like drugs sort of became a scourge across our country, we are seeing in increasing numbers these kinds of trade secret theft cases that are originating from

China.

I do think it's important, and I do think we have to send a message to China, that this kind of criminal behavior is not going to be tolerated in the United States and that there are serious consequences for the people that they send here or that they recruit here to commit these crimes against our country.

Third, I have to think about how to best protect the country against further crimes of this defendant. Mr. Mo has no criminal history. He is clearly a decent person who made some very bad mistakes, but I am understandably concerned that he has not even severed his relationship with DBN. This is the country that sent him here and tasked him with committing this crime, and he still works for them and, according to Mr. Weinhardt's statement, intends to continue working for them even if he were in a probationary setting with me.

I know that DBN belongs to his brother-in-law and his sister works there, and I understand that, but I am concerned that, given the fact that he never said no to this company and that he continues to be supported by them emotionally and financially, this kind of crime could reoccur under the right circumstances, and that concerns me.

I also want to discuss some of the special interests that arose during the course of this case that relate uniquely to Mr. Mo.

First, the idea of Mr. Mo's deportation is one that is very complex. Ordinarily, I am very sympathetic to people who are in the United States working hard and otherwise not committing crimes. I hate to see those folks torn out of the United States and tossed back to a country that has very different freedoms than we have here that may be a very dangerous situation for certain people.

I am cognizant of the fact that Mr. Mo was one of the students caught up in the Tiananmen Square massacre and that he was punished as a result of his work there, but it is very hard to stomach the idea of supporting somebody remaining in the country who essentially created -- you know, committed espionage against the country.

He sat in this country for years stealing from the country, and it is hard to say to that person you should not be deported when he was so badly abusing this country when he was busy sending our very best technology back to China.

Second, I can't find here that he should be credited, at least certainly not on a day-to-day basis or -- day-to-day basis, against his term of imprisonment or any term of imprisonment for the pretrial release conditions. I know they were more onerous than normal conditions would be. He had a 24-hour guard, and, given the medical procedures he was undergoing, that was undoubtedly an invasion of his privacy and a limit on his freedoms.

But every morning he could get up when he wanted to, he could take a nap if he wanted to, he could go to bed when he wanted to, he could wear what he wanted to wear, eat what he wanted to eat, watch what he wanted to watch, read what he wanted to read, talk to who he wanted to talk to. He could go to chess matches, he could go to tennis matches, he could go to church, and he could go to the school events.

In short, he could do, really, almost anything he wanted to do, he just had to do it while guards followed him around, and that is very different than those who are incarcerated suffer. Those who are incarcerated have none of those same freedoms, and they don't get to live with their wife and children. They don't get to do all of those kinds of things. So to me this was not the same as detention.

Third, I have to consider Mr. Mo's medical conditions and whether or not those warrant a downward variance. Clearly, there is concern here for Mr. Mo and what may happen to him in the future, but I am confident that BOP can handle his needs, at least those needs that relate to the monitoring of his situation.

The doctors who testified have assured me that these are regular blood tests, they are regular CT scans, they are regular chest X-rays that need to be done. There's no special expertise necessary to do those things. They've also assured me that Defendant has the right to send those blood results and

chest X-rays and CT scans to his very competent experts at MD Anderson. He can send them those results. They can read them, and they can decide if something needs to be done.

If something needs to be done, I have every reason to believe that BOP would move him into one of those Level IV facilities if he's not already there and take every effort to treat this cancer. So I certainly am concerned for Mr. Mo and his health, but I also think BOP is capable of handling those needs.

I also have considered here the family issues facing the family. And although I know Mr. Mo has spoken publicly with his children's names and talked about some of the sad circumstances surrounding the struggles with his daughter, I ask that anybody who is here in the media not publish that information about the daughter in particular. I can't order you not to. You can. It happened in a public courtroom. But I am concerned about what happens to this daughter if that information becomes publicly available.

I am very, very sympathetic to the difficulties that this family is undergoing. However, and this is a very sad fact, but Mr. Griess is exactly right that if we had a forensic psychologist examine every defendant we sentence, probably 95 percent of them would have the similar kinds of trauma that's going on in your family.

The fact of the matter is crimes and imprisonment

cause stress and anxiety and depression and chaos in families, and it's not something our country is dealing with particularly well right now, but it is something that's happening almost everywhere.

And the fact of the matter is your family is actually far better off than most of the families we see. Your family is intact, meaning you've got two good parents. You're financially secure. There's no substance abuse problems in your family, there's no sexual abuse, there's no physical abuse. There's none of those sort of horrors that we see on a depressingly daily basis here in this court.

Your daughter is struggling, that's clear, and I hope for the best for her, but in some ways this case actually got her some help she needed because those problems predate by many years your arrest. And so I'm glad she's getting some help. I hope she'll continue to get some help. But ultimately, that is not a situation that is all that different than what I see on a daily basis.

Finally, I have to consider in your case the 11(c)(1)(C) that was entered into here. This is an agreement that the Government reached with you, I think appropriately, to a sentence that's already less than half of what you would otherwise have been -- or would have received under an advisory guideline range.

And in my view, having been the judge assigned to all

of this during the pretrial litigation, the Government didn't offer you that plea agreement because they had a weak case. It wasn't one of those situations where the Government was worried about getting a conviction. It certainly appears to me they offered you that plea agreement because of the enormous resources that would have gone into trying this case.

So I have to consider that you've already received -- by way of allowing you to plead to just one count with a ten-year maximum and then agreeing that your sentence should be no more than 60 months, that you've already received a significant benefit here in the plea bargain that was struck.

So putting all of those things together and coming to a sentence in your case is not an easy one. I have debated more hours than I could count what to do in this case, and that analysis has shifted as I've heard the different arguments of the parties and the evidence that's been presented and read all of the materials. And less than many other cases, I am not sure that I'm going to get it entirely right. I'm not sure there is a good or right answer in this case.

I think I could sentence you to 60 months' imprisonment and have that be an appropriate sentence. I think I could sentence you to nine months' imprisonment and have that be an appropriate thing and anywhere in between. It's been trying to balance and swinging back and forth between those kinds of numbers that I've been doing over the past period of

days and weeks.

But ultimately, what I think the appropriate sentence in your case is is 36 months' imprisonment, and that is what I'm going to impose. This is a sentence that is two years lower than I would otherwise have given because of the medical conditions that exist here with you.

If you were a healthy man who had never suffered this rare form of cancer, I would have imposed a five-year sentence in this case, and that is because of the very serious nature of the crime that was committed and my need, as I've said, to recognize the deterrence that has to be brought to bear here.

Following that term of imprisonment, I will order a three-year term of supervised release. You will have to comply with all the standard conditions of supervision. In addition, you'll have some special conditions of supervision that relate to your particular and individual needs. Those include surrendering to immigration if you are ultimately -- they decide they're taking action against you for deportation.

I am not going to impose a fine, and I'll find that you don't have the ability to pay a fine in light of the restitution that we know is coming. That restitution that had been requested was, you know, well in excess of a half a million dollars and even if it's reduced by a significant amount will still be quite high in this case.

We will handle the restitution issues at a later date,

but because, undoubtedly, there will be at least some restitution ordered in this case, I am going to impose what are our standard financial conditions, meaning that you can't solicit or incur or apply for any further debt, including but not limited to loans, lines of credit, or credit cards, either as a principal or co-signer, as an individual or through any corporate entity, without first obtaining written permission from the probation office until that restitution has been paid.

You shall provide complete access to financial information, including disclosure of all business and personal finances, to the probation office, again, until the restitution has been paid.

And you'll have what is a standard search condition in our district, meaning that the probation office has my permission to search you or your car, your house or any business that you might have, if they have a good reason to believe you're failing to comply with the law or that you're violating one of the terms and conditions of supervision.

If they conduct that kind of a search, they have to do it in a reasonable way and in a reasonable manner at a reasonable time. They can bring the marshals with them if they need to for their security or for yours.

If things are going well, they're not going to invade your privacy in that way, but if they show up to visit you and there's brand new cars sitting in the parking lot or there's,

you know, brand new computer equipment sitting inside that they don't know anything about, then they're probably going to be suspicious that there's financial issues they need to delve into.

I order forfeiture as set forth in previous preliminary orders of forfeiture in this case. There is no other forfeiture other than what's been briefed by the parties and presented through pleadings to the Court.

I do order that you pay the $100 special assessment that is mandatory in this case.

The last thing I want to talk to you about today is your right to appeal. Now, you have waived most of your rights to appeal pursuant to your plea agreement. I have imposed a sentence that was consistent with that plea agreement, but visit with your lawyers about what appeal rights you have left.

If you decide you want to appeal, you just need to let them know, and they'll file that notice of appeal for you. And they'll handle, I assume, any appeal on your behalf. If for some reason your lawyers are no longer willing to work with you past the point of appeal, then if you qualify for an attorney, we will appoint one to represent you and to handle that appeal.

Now, if you want to appeal, even if the plea agreement prohibits it, they'll still file the protected paperwork for you, and that will go forward under certain unique appeal grounds.

Mr. Griess, I think we have Count 2 to be dismissed.

MR. GRIESS: Correct, Your Honor.

THE COURT: Count 2 will be dismissed.

Mr. Beck and Mr. Walczweski, I don't know whether I'll see you back here for our restitution hearing. If I do, I'll look forward to it. If not, I doubt that you'll have occasion to come back to Iowa in the future, but it was nice working with you and nice to get to know you.

Is there anything else, Ms. Dietch, that we need to clarify as part of the judgment?

THE PROBATION OFFICER: No, Your Honor.

THE COURT: Mr. Griess?

MR. GRIESS: No, Your Honor.

THE COURT: Mr. Weinhardt and team?

MR. WEINHARDT: Three things, Your Honor. First, we are informed that for designation purposes, which we've discussed a lot in this case, it's very important that Mr. Mo's medical records accompany the presentence report and be made part of it, and so we would ask that the exhibits not to the supplemental -- well, I have to enumerate these. The Trent letter, the Araujo letter, but then all of Group Exhibit 2 to the original sentencing brief and Exhibit 3, which was the summary of those records, we would ask that all of those be appended to the presentence report.

THE COURT: Okay. We will --

MR. WEINHARDT: I can send the Court an e-mail this afternoon that itemizes for sure what exhibits we want appended, but that's what we would ask.

THE COURT: We can figure out how to do that and will do that. I also am going to order as part of the sentencing judgment unusually strong language about getting these tests done. In fact, I am going to order -- and if you want to help draft some language and send it to me by e-mail, we'll get it into the J & C, but essentially directing the BOP to conduct these tests on the schedule that's been provided. And if you want to give me the exact schedule of when, which months and years those are due.

MR. WEINHARDT: We can do that. And then also just regarding facility recommendation, we would like to caucus internally a little bit about that, but first and foremost, we want a recommendation away from the private institutions where foreign nationals usually go, but we may have some particular language that we want about a particular institution.

THE COURT: And that would be fine. You can get me that material as well. We'll want to get the J & C on file by tomorrow, but you can send me that information today or early tomorrow morning.

I am also going to direct, unless -- Mr. Griess, do you have any position with respect to self-surrender?

MR. GRIESS: I leave that to the Court's discretion,

Your Honor.

THE COURT: This is an appropriate case, given the medical issues, in my view, for self-surrender. I'm going to order that self-surrender not occur any sooner than 90 days from now so we have time to do the restitution hearing and get things finalized, and if we need to bump that back to do some other things, we can, but no sooner than 90 days is what I'm looking at.

If you have particular facilities, I can put that language. Of course, those are recommendations, but there are certain ways I can write that that makes it more recommended than others --

MR. WEINHARDT: We would appreciate that.

THE COURT: -- for lack of better terminology there.

MR. WEINHARDT: That covers all of my issues, Your Honor.

THE COURT: Okay. Mr. Mo, you are somebody I've had a chance to get to know through all of these cases. I really do wish you the very best of luck. I really do hope for your family that things improve and continue to get better for you.

I know you've said that you destroyed everything in your life. I don't think you have. You certainly hit a bump in the road, but you are still a young man and you still have an incredible brain and you still have a good family. You can put this back together. It's just going to take some work. But you

haven't lost everything. You just learned a really harsh lesson.

THE DEFENDANT: Thank you, Your Honor.

THE COURT: Good luck to you.

We are adjourned.

(Proceedings concluded at 2:37 p.m.)

C E R T I F I C A T E

I, Kelli M. Mulcahy, a Certified Shorthand Reporter of the State of Iowa and Federal Official Realtime Court Reporter in and for the United States District Court for the Southern District of Iowa, do hereby certify, pursuant to Title 28, United States Code, Section 753, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated at Des Moines, Iowa, this 26th day of October, 2016.

/s/ Kelli M. Mulcahy
Kelli M. Mulcahy, CSR, RMR, CRR
Federal Official Court Reporter